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EXAMINER

COLE, LAURA C

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1744

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Please find below and/or attached an Office communication concerning this application or proceeding.



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**MAILED**

OCT 04 2004

**GROUP 1700**

**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/037,020  
Filing Date: December 21, 2001  
Appellant(s): HENEGHAN, KAREN

Nicholas A. Camasto  
For Appellant

**EXAMINER'S ANSWER**

**MAILED**

OCT 04 2004

**GROUP 1700**

This is in response to the appeal brief filed 05 August 2004.

**(1) *Real Party in Interest***

A statement identifying the real party in interest is contained in the brief.

**(2) *Related Appeals and Interferences***

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

**(3) *Status of Claims***

The statement of the status of the claims contained in the brief is correct.

**(4) *Status of Amendments After Final***

No amendment after final has been filed.

**(5) *Summary of Invention***

The summary of invention contained in the brief is correct.

**(6) *Issues***

The appellant's statement of the issues in the brief is correct.

**(7) *Grouping of Claims***

The rejection of claims 1-9 stand or fall together because appellant's brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7). In fact, appellant positively sets forth that the claims DO stand or fall together based on the arguments presented with respect to claims 1 and 7.

**(8) *Claims Appealed***

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(9) Prior Art of Record**

2849745	Madsen	09-1958
5096272	Belokin, Jr. et al.	03-1992
4376521	Walters	03-1983
4951909	Russo et al.	08-1990
6016926	Smith, II et al.	01-2000
6308923	Howard	10-2001
2890851	Anderle	06-1959

**(10) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Madsen, USPN 2,849,745 in view of Belokin, Jr. et al., USPN 5,096,272. (This rejection is set forth in a prior Office Action, mailed on 21 April 2004.) Madsen discloses a cleaning rack for blinds having a rigid spine (31) however do not include end supports. Belokin, Jr. discloses the claimed invention including a first and second end support (Figure 10 (10 and 10A)), the first and second end supports each including a back

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portion (42 and 42A) and a lower portion (12 and 12A), and suction cup means affixed to the back portions (50 and 50A). The end supports include side portions restricting longitudinal horizontal movement (20 and 20A) and the end supports further include front portions (31 and 31A) for restricting transverse horizontal movement. The suction cup means comprises a pair of suction cups (one pair being 50 and 50, the other being 50A and 50A). The invention of Belokin, Jr. et al. is an adjustable shelf, the shelf is capable of shelving or holding a mini blind having a rigid spine. Although Belokin, Jr. is for supporting and displaying products inside of a cabinet, and not specifically for supporting or displaying mini-blinds, it is analogous art because the common problem to be solved is to provide support means to an article. It would have been obvious for one of ordinary skill in the art to substitute the support structure of Madsen for the support structure that Belokin, Jr. et al. teach as an alternative supporting structure that is detachable to a vertical surface.

Claims 1 and 3-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Madsen, USPN 2,849,745 in view of Walters, USPN 4,376,521. (This rejection is set forth in a prior Office Action, mailed on 21 April 2004.) Madsen discloses a cleaning rack for blinds having a rigid spine (31) however do not include end supports. Walters discloses the claimed invention including a first and second end support (Figure 1 (10 and 10)), each support including a back portion (30) and a "lower" portion (20), and suction cup means (14) affixed to the back portions. Each of the end supports comprises front portions (hollowed portion (60)) for restriction transverse horizontal movement of the spine (see Figure 1). The suction cup means comprise a pair of

suction cups (Figure 1). The device of Walters is capable of supporting a spine-like device (12 or 18) as shown in Figure 1. Although Walters is for supporting a glass shelf that is rigid and elongated, and not specifically for supporting mini-blinds, it is analogous art because the common problem to be solved is to provide support means to an article. It would have been obvious for one of ordinary skill in the art to substitute the support structure of Madsen for the support structure that Walters teaches as an alternative supporting structure that is detachable to a vertical surface.

Claims 1 and 3-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walters, USPN 4,376,521 in view of Madsen, USPN 2,849,745. (This rejection is set forth in a prior Office Action, mailed on 21 April 2004.) Walters and Madsen discloses all elements above, however Walters does not include a mini-blind having a rigid spine. Walters does include a hanging rod (18). Although Walters is for supporting a hanging rod (18), and not specifically for supporting mini-blinds having a rigid spine, it is analogous art because the common problem to be solved is to provide support means to an article, namely an elongated rigid rod or spine. It would have been obvious for one of ordinary skill in the art to substitute the hanging rod of Walters for a mini-blind having a spine, as Madsen teaches, as a means of supporting blinds.

Claims 1 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Madsen, USPN 2,849,745 in view of Russo et al., USPN 4,951,909. (This rejection is set forth in a prior Office Action, mailed on 21 April 2004.) Madsen discloses a cleaning rack for blinds having a rigid spine (31) however do not include end supports. Russo et al. disclose the claimed invention including a first and second end support (18 and

19), each support including a back portion (32 and 34) and a lower portion (22 and 23, wherein the attachment to the portions 32 and 34 are transverse), and suction cup means (20, 21) affixed to the back portions. Each of the end supports comprises front portions (the loop or hook formed by 22 and 23 provide a front portion) for restriction transverse horizontal movement of the spine (see Figure 1). Although Russo et al. is for supporting and displaying an advertising shade (Column 2 Lines 31-33), and not specifically for supporting mini-blinds having a rigid spine, it is analogous art because the common problem to be solved is to provide support means to an article, namely an elongated rigid device. It would have been obvious for one of ordinary skill in the art to substitute the support structure of Madsen for the support structure that Russo et al. teach as an alternative supporting structure that is detachable to a vertical surface.

Claims 1-4 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Madsen, USPN 2,849,745 in view of Smith, II et al., USPN 6,016,926. (This rejection is set forth in a prior Office Action, mailed on 21 April 2004.) Madsen discloses a cleaning rack for blinds having a rigid spine (31) however do not include end supports. Smith, II et al. disclose the claimed invention including a first and second end support (see Figures 1 and 2 at (14 and 16)), each support including a back portion and a lower portion (see particularly Figures 4 and 5), and suction cup means (24) affixed to the back portions. Each of the end supports comprises front portions and side portions (20) for restriction transverse horizontal movement of the spine (see Figure 4). The suction cup means comprise a pair of suction cups (Figure 2). Although Smith, II et al. is for supporting and mounting a bath toy holder (12), and not specifically for supporting mini-

blinds having a rigid spine, it is analogous art because the common problem to be solved is to provide support means to an article, namely an elongated rod or spine-like device. It would have been obvious for one of ordinary skill in the art to substitute the support structure of Madsen for the support structure that Smith, II et al. teach as an alternative supporting structure that is detachable to a vertical surface.

Claims 1, 3, and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Madsen, USPN 2,849,745 in view of Howard, USPN 6,308,923. (This rejection is set forth in a prior Office Action, mailed on 21 April 2004.) Madsen discloses a cleaning rack for blinds having a rigid spine (31) however do not include end supports. Howard discloses the claimed invention including a first and second end support (Figures 5, 6 and 8, individually depicted in Figure 2), each support having a back portion (24) and a lower portion extending perpendicular thereto (see Figure 2 hatched lines displaying an unlabeled portion appearing to be perpendicular to (24)), and suction cup means (12). The end supports each include a front portion for restricting transverse horizontal movement (see especially Figure 2, portion with "ball" or "bulb" at the end). The system further includes an intermediate support (Figure 6 includes a third support) having the same structure of the first and second support end and suction cup means affixed to the back portion. Although Howard is for supporting and mounting a crossbar (see Figures 5 and 6), and not specifically for supporting mini-blinds having a rigid spine, it is analogous art because the common problem to be solved is to provide support means to an article, namely an elongated rod or spine-like device. It would have been obvious for one of ordinary skill in the art to substitute the support structure of Madsen for the



support structure that Howard teaches as an alternative supporting structure that is detachable to a vertical surface.

Claims 1, 3, and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Howard, USPN 6,308,923 in view of Madsen, USPN 2,849,745. (This rejection is set forth in a prior Office Action, mailed on 21 April 2004.) Howard and Madsen disclose all elements above, however Howard does not include a mini blind having a rigid spine. However, in Figures 5, 6, and 8 the device is supporting a rigid spine element. It would have been obvious for one of ordinary skill in the art to substitute the spine-like device of Howard for a mini-blind having a spine as Madsen discloses as a means of temporarily supporting blinds by a detachable structure.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Madsen, USPN 2,849,745 in view of Belokin, Jr. et al., USPN 5,096,272 in further view of Howard, USPN 6,308,923. (This rejection is set forth in a prior Office Action, mailed on 21 April 2004.) Madsen, Belokin Jr. et al., and Howard disclose all elements above. Further Howard discloses that one or more intermediate supports may be used to diversify the support's application (Column 5 Line 58 to Column 6 Line 4). It would have been obvious for one of ordinary skill in the art to implement an intermediate support such as Howard teaches between the first and second end supports of Madsen and Belokin, Jr. et al. to add in further extension support of a diverse device.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Madsen, USPN 2,849,745 in view of Belokin, Jr. et al., USPN 5,096,272 in further view of Howard, USPN 6,308,923 and in even further view of Anderle, USPN 2,890,851. (This

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rejection is set forth in a prior Office Action, mailed on 21 April 2004.) Madsen, Belokin, Jr. et al., and Howard disclose all elements above, however do not provide alignment indicia. Anderle discloses an installation and mounting bracket that uses indicia (29) to adjust the mounting locations of the screws in mounting to maintain the correct vertical alignment, as the Applicant's invention also attempts. It would have been obvious for one of ordinary skill in the art to provide alignment indicia to the device of Madsen, Belokin, Jr. et al., and Howard, such as Anderle discloses so that the mounted device is aligned levelly. Further, it would have been obvious for one of ordinary skill in the art to provide such indicia by a horizontal line as an alternate way of presenting the indicia.

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Madsen, USPN 2,849,745 in view of Belokin, Jr. et al., USPN 5,096,272 in further view of Howard, USPN 6,308,923 and in even further view of Smith, II et al., USPN 6,016,926. (This rejection is set forth in a prior Office Action, mailed on 21 April 2004.) Madsen, Belokin, Jr. et al., and Howard disclose all elements above, however do not provide an intermediate support has a pair of suction cups. The intermediate portion, taught by Howard above, has a singular suction cup. Smith, II et al. also discloses all elements above including using a pair of suction cups for its support ends for strength (Column 2 Lines 50-56). It would have been obvious for one of ordinary skill in the art to implement an intermediate support such as Howard teaches between the first and second end supports of Madsen and Belokin, Jr. et al. to add in a further extension support of a diverse device. Further, it would have been obvious for one of ordinary skill

in the art to modify the intermediate support of Howard and have a pair of section cups such as Smith, II et al. teach instead of just one for added strength.

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Madsen, USPN 2,849,745 in view of Belokin, Jr. et al., USPN 5,096,272 in further view of Howard, USPN 6,308,923, in further view of Smith, II et al., USPN 6,016,926, and in even further view of Anderle, USPN 2,890,851. (This rejection is set forth in a prior Office Action, mailed on 21 April 2004.) Madsen, Belokin, Jr. et al., Howard, and Smith, II et al. disclose all elements above, however do not provide alignment indicia. Anderle discloses an installation and mounting bracket that uses indicia (29) to adjust the mounting locations of the screws in mounting to maintain the correct vertical alignment, as the Applicant's invention also attempts. It would have been obvious for one of ordinary skill in the art to provide alignment indicia to the device of Madsen, Belokin, Jr. et al., Howard, and Smith II, et al., such as Anderle discloses so that the mounted device is aligned levelly. Further, it would have been obvious for one of ordinary skill in the art to provide such indicia by a horizontal line as an alternate way of presenting the indicia.

**(11) Response to Argument**

The pending claims have been rejected under 35 USC 103(a). The examiner's comments will address the appellant's arguments in the order that they appear in the brief. The Appellant makes note that the Madsen patent (and others) are representative of the state of the art relative to supporting blinds for cleaning and that there are a myriad of suction cup-mounted apparatus for supporting a large number of other

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devices, and that *"it may certainly be argued that any of these devices could have been used to support a mini-blind for cleaning."* However, it is lack of the "Appellant's inventive concept" that has not been found in the applied prior art. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. *If the prior art structure is capable of performing the intended use, then it meets the claim.* In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). Furthermore, the suction cup apparatus each provide examples of supports, mounts, or holders that have simple assembly/construction and would each be capable of holding a rigid-spine of a mini-blind assembly, and therefore are analogous to the art to the state of the art mini-blind cleaning support members.

The Appellant provides a declaration (Amendment A) of evidence of the commercialization of the invention and that the evidence is believed to be dispositive of the question of unobviousness under Section 103. The Examiner has considered the declaration of the Appellant (received 23 February 2004) and the Examiner has concluded that the gross sales figures do not show commercial success absent evidence as to market share, *Cable Electric Products, Inc. v. Genmark, Inc.*, 770 F.2d 1015, 226 USPQ 881 (Fed. Cir. 1985), or as to the time period during which the product was sold, or as to what sales would normally be expected in the market, *Ex parte Standish*, 10 USPQ2d 1454 (Bd. Pat. App. & Inter. 1988). See MPEP 716.03(b)IV.

**Issues:** "The presence of suction cup supports in the Madsen reference, coupled with the fact that no art, to the Appellant's knowledge, did combine the references would appear to argue against obviousness." Also, the Appellant states that "the argument appears to be reasonable since Belokin's adjustable shelf **could** be used to support a mini-blind for cleaning, if the idea occurred to the man of ordinary skill in the art." Again, the Examiner contends that Belokin and Madsen are analogous art because the common problem to be solved is that each provides support means to an article. Madsen provides a support for cleaning blinds and Belokin provides a support having suction cup end supports for holding a shelf. Therefore, It would have been obvious for one of ordinary skill in the art to substitute the support structure of Madsen for the support structure of Belokin as an alternative supporting structure that is detachable to a vertical surface. In respect to the prior art of Walters, Russo, Smith, and Howard, the Appellant argues that the supports of both Walters and Russo are different and very unlike the supports of the Appellant's. However, the Appellant did not specifically address as to how the supports of Walters, Russo, Smith, or Howard were structurally different than the claimed supports. The supports of Walters, Russo, Smith, and Howard each in fact include all structure and limitations as claimed of the Appellant's supports whether or not they are different or bear no resemblance. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). The Appellant states that the intermediate support element would not have been obvious at the time of the invention. However, the

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Appellant did not give reasons as to why the support element would not have been obvious. Therefore, it would have been obvious for one of ordinary skill in the art to implement an intermediate support (Howard) between end supports to add a further extension support of a diverse device and to have a pair of suction cups (Smith, II et al.) for added strength. The Appellant states that providing alignment indicia on the supports would not have been obvious at the time of the invention. However, the Appellant did not provide reasons as to why the alignment indicia would not have been obvious. Therefore, it would have been obvious for one of ordinary skill in the art to provide alignment indicia (Anderle) so that the mounted device is aligned in levelly.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,


  
Laura C Cole

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September 14, 2004

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